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PROPOSED REFORMS IN CRIMINAL PROCEDURE

BY JUSTICE HORACE E. DEEMER

Supreme Court of Iowa

Love of abstract justice is common to mankind in general and to all systems of law. But there are certain characteristics of what is known as the common law which differentiate it from all other systems. In its certainty, its fixity, its conservatism, which distrusts change and values precedent, it possesses qualities unknown even to the Mussulman with his interpretations of the *Koran*. There are two old maxims which clearly illustrate this thought. One reads "It is better that the law be certain, than that the law should be just." And another: "An ounce of precedent is worth a pound of principle." The legal ideas, methods and practices which prevail upon the European continent and in Spanish America are entirely different from those which obtain in England, the United States, and wherever the common law system is in force. It would be interesting to note the causes which led to the establishment of the two systems which may rightly be called the common law and the civil law; but even if time permitted this would be beside my purpose and I need only say that primarily perhaps it may be truthfully asserted that they are racial or temperamental. Much, of course, is due to environment in the formation of any social institution; but more doubtless to type of mind and the development of ideals. The chief feature of our common law system is, I think, its regard for the individual rights of man. It is nowhere denied that ideal liberty prevails only in those countries where the common law system obtains; and it is even more significant that this freedom has never consciously stood for license, but for liberty in its true sense. Under this system a man may do as he will save as his conduct interferes with the rights and privileges of others. When this occurs he must subordinate his will to the public good. He is not only to obey, but also to prevent others from disobeying. This is the "liberty under law," which safeguards our system; liberty, the child of the common law which today holds together the most advanced civilization of our times.

Our forebears were self-assertive, although not lacking in self-control and in respect for authority. In this they differed essentially from the Slavs on their east and the Celts on the west. Moreover, they were intensely practical, somewhat phlegmatic and ideally realistic. They were not given to theorizing or to experimentation. Their pugnacity, their respect for authority, their self-control, their conservatism, and their practicability made their institutions what they are, and secured a product very different from that which grew upon the soils of Italy, Spain or France. So much for the genesis of the system which we are to discuss for a few moments this evening. One other premise may be taken before going deeper into the subject. Our thought so far may have been of substantive law, forgetting that the remedial grew up with the substantive and that inseparably bound up with rights of persons and rights of things are modes of procedure and forms of action. Those tendencies of our ancestors which gave substance to our law, very markedly affected the forms—the procedure whereby rights and duties are made effective. In the early stages of procedure there was great respect for forms and precise verbal expression was for various reasons insisted upon; but with the afflux of time these rules were modified and absolute precision was not required or exacted, liberal provision being made for amendment. Growth in this respect has always been evolutionary and not revolutionary. The contests between the king and the allied forces of barons and churchmen, and landholders or middle classmen brought us Magna Charter, and preserved, if it did not secure, the jury system. Criminal procedure was exceedingly technical, due no doubt to this selfsame contest; and the tenacity with which men clung to their individual rights. Our ancestors had so much respect for forms of law that they thought it better for a guilty man to escape than that technicalities should be disregarded. Modifications in criminal procedure have almost universally, especially until recent years, been in favor of the accused rather than to secure that certainty of punishment which should be the end of any penal system. There is a growing sentiment, not only among laymen but with lawyers as well, that our criminal procedure is overloaded with technicality and is on the point of breaking down. That there should be some reform in our system of criminal procedure is everywhere conceded; but for one I am not ready to exchange our own for continental methods. I do not believe we are ready to resort to that torture, that bullying of prisoner and witnesses and that overweening desire for conviction

which prevailed, for instance, in the Dreyfus case in France. Whilst I am willing to concede that the pendulum has swung too far in this country in favor of the individual charged with crime, it is quite certain, I think, that we shall not in our quest for reform revolutionize our entire system and adopt another developed by another race and in a different atmosphere. The most insistent reformer will hardly demand the adoption of continental methods. But it must be conceded that too many criminals are escaping punishment under our present rules and that something must be done to secure more speedy trials and greater certainty of conviction. Some one has said that the present situation is due to sentimentality and technicality, sentimentality on the part of the whole people, and technicality on the part of the lawyers and courts. I quite agree with Mr. Andrew D. White that there is a "slimy, mushy and gushy sentimentality for criminals," which finds expression in the jury box and that there are fewer convictions for crime proportionately in this than in any other country. Too often this sympathy is for the criminal, with no compassion even for the real sufferers although they be a widow and orphaned children. He said that he had no sympathy with the criminal, but for those who as a result will be murdered, their families, and their children. His final conclusion was that "our sham humanitarianism has become a stench," and that "the cry now is for righteousness." It is easy to lay the blame for the lax administration of our criminal laws upon the people who either carry their sympathies into the jury box or are unconsciously perhaps governed thereby in arriving at their verdicts. Indeed this sickly sentimentality which crops out in the public prints, manifests itself in public prisons and is used most effectually by lawyers in the trial of cases, has had very much to do with the breakdown, if such there be, in the administration of our criminal law. Reformation in this depends upon the growth of a public opinion which will substitute sober sense for emotional sentimentality in the jury box. While there must be a decided reform of all the people if we are to secure needful results it does not follow that the law itself is not at fault and that no reforms are needed in court procedure. Neither lawyers nor judges should be content to say: "I am not wholly to blame. The people are as much if not more responsible than I for existing conditions." For one I am ready to abandon the old maxim that it is better that ninety-nine guilty men should escape than that one innocent one should suffer. In civil procedure it sometimes happens that individuals must suffer

in particular instances rather than to change a fundamental and well established rule for the government of all. And so in criminal procedure it is better that a few should suffer rather than that the many should escape. Nothing can be more destructive of good order than a widespread disregard or a feeling of disrespect for the processes and results of criminal law. If public justice is swift and true the individual is content but if long delayed and uncertain he becomes restive, prone to take the law into his own hands and to resort to lynch law. Between Continental and Anglo-Saxon methods there must be a golden mean which it is our duty to discover and apply; some system which will preserve the interests of society by punishing crime, and at the same time safeguard the individual against unjust conviction. I believe that in our zeal for liberty and the security of individual rights we have gone too far and in large degree forgotten or ignored the rights of society as against the individual. As Shakespeare puts it "liberty plucks justice by the nose and quite athwart go all decorum." The chief difficulty before us lies in the fact that most of these so-called guarantees of individual rights are embedded in constitutional provisions which cannot be changed save by the laborious and uncertain processes of amendment. One of our ablest law writers recently said:

Respect for the Constitution is one thing and respect for substantial fairness of procedure is commendable; but the exaltation of technicalities merely because they are raised on behalf of an accused person is a different and very reprehensible thing. There seems to be a constant neglect of the pitiful cause of the injured victim and the solid claims of law and order.

Another has said:

We have long since passed the period when it is possible to punish an innocent man; we are now struggling with the problem whether it is any longer possible to punish the guilty.

Constitutional limitations in general are, that no man shall be deprived of his life or liberty without due process of law; that he shall not be convicted save by a jury of his peers; that he shall be informed of the accusation against him, be confronted by the witnesses and not be compelled to testify against himself; that he shall not be subject to unreasonable searches and not be twice put in jeopardy for the same offense and that no person shall be held to answer for any serious offense unless on presentment or indictment

by a grand jury. In securing these to the individual, legislatures and the courts have established such technical rules of procedure that the result has been a practical break down of our criminal jurisprudence. That we may closely study some of the proposed reforms it is well to consider in a brief way the ordinary and orderly course of procedure in criminal cases. First we have the court presided over by a judge, and with necessary officials; the sheriff, and the prosecuting attorney. And as an integral part of the court in most States, a grand jury. Then we have a committing magistrate; sometimes a justice of the peace and sometimes a coroner. A prosecution is instituted by a preliminary accusation or information before the committing magistrate, or by presentment and indictment of a grand jury. I am omitting for the present those minor crimes generally called misdemeanors which are tried before some inferior court or tribunal. The purpose of the preliminary examination is to determine whether or not a crime has been committed and if there be a probability that the person accused is the one guilty thereof. That being found affirmatively the accused is held to the grand jury. The proceedings of the grand jury are secret which fact is really an anomaly in our system of jurisprudence. Bentham most seriously objected to this secret inquisition as illogical; and in contrasting the two juries known to English law as grand and petit said, of procedure before the trial jury a characteristic and indispensable property is publicity; of the procedure before the grand jury a property still more characteristic is secrecy. After indictment comes the arrest, the arraignment, the plea and if there be no continuances, the trial before a petit jury with aid of counsel secured or guaranteed; and if there be a conviction an almost unlimited right of appeal from every question both of law and fact arising upon the trial. In some jurisdictions the State may also appeal for the purpose of settling moot questions of law. In the event of a reversal the verdict and judgment of the lower court does not bind the defendant; but in many jurisdictions it is conclusive upon the State. That is to say if one is accused of murder and found guilty of manslaughter and upon appeal the judgment is reversed and a new trial awarded, the defendant cannot be again put upon trial for any higher degree of crime than manslaughter. If the judgment is affirmed by the State court there is still a right in the defendant to petition for a rehearing; and in certain cases a further right of appeal to the supreme court of the United States with the right in that court also for a rehearing. Surely with all this complicated machin-

ery there is little fear that an innocent man will be convicted and as a matter of fact the entire plan is in the interest of the individual charged with crime. In the limited time at my command I cannot delve into the musty pages of the past to find the genesis of these various proceedings; nor can I do more than call attention to some of the more serious defects therein. The court which administers the criminal law is undoubtedly properly organized. That is to say there must be a presiding genius,—a prosecuting officer and a sheriff or other executive officer. But in the administration of the law it has seemed to me that the state's attorney should be charged with greater responsibility in order that he may be held accountable for the proper and orderly administration of justice. He should not be so situated as to be able to shift the blame for inaction upon the grand jury or any other tribunal. The trial judge should have larger powers than are now granted. He should be something more than a mere moderator. He should have more power in the selection of a jury, exercise greater authority over counsel, and have the undoubted right to prohibit the stage settings and trumpery which ingenious counsel use to attract and secure the compassion and sympathy of a jury. Our criminal trials have become altogether too sensational and instead of being conducted sanely and soberly they are in many communities regarded as a species of entertainment for the groundlings. Were an admission fee charged they would rank well with the melodrama or the vaudeville. After much hesitation and reflection I have concluded that a grand jury which possesses no inquisitorial powers should be entirely abolished; and where given such powers, should be summoned only by the court upon its own motion or upon the request of the state's attorney: never at the request of a defendant. In place of the grand jury the committing magistrate should be substituted, who would give to every one a public hearing; and if there be probable cause for holding one accused it should be the duty of the prosecuting officer to file an information or indictment in the trial court against the person held to answer to that court and not to a grand jury. There seems to be no good reason why within proper limits this information or indictment, call it what you will, should not be amenable to the same extent as a pleading in a civil case with the right of a defendant to a continuance in case of bona fide surprise. This system would fasten responsibility where it properly belongs, safeguard a defendant against malicious and unfounded prosecution because the proceedings against him would be public and not behind closed doors, and save

many miscarriages of justice because of some technical or trifling defect in the indictment. A grand jury with inquisitional powers might be called to assist in ferreting out crime whenever in the judgment of the court there was need for such assistance, and might regularly be empanelled say once a year for this purpose. The only reason for preserving this archaic relic is to assist the prosecutor in the discovery of crimes and criminals. It is not longer needed as a protection against arbitrary power and authority, for here the people themselves are the ruling power; and against themselves they need nothing but regular and orderly procedure. The history of this body shows conclusively that it has outlived its usefulness. Following the information or indictment comes the arraignment and plea. The former is in no sense necessary when the defendant is furnished with a copy of the charge as he is in most jurisdictions. There is necessity for a plea, for a defendant may wish to admit his guilt; but there is neither sense nor logic in the proposition that a case duly tried by a jury under proper instructions from the court, should be reversed because of failure to arraign or for want of a plea by the defendant. If he does not admit his guilt he must be tried and if tried he is denying the commission of the crime charged. An opportunity to plead should, of course, be given, but a defendant duly tried as upon a plea of not guilty should not be heard to complain upon appeal of failure of the record to show a plea. With the case at issue by plea or failure to admit guilt it should be speedily tried. As a matter of fact few cases are tried until the patience of both court and counsel is exhausted, and so much perjury has been committed as to be shocking to both court and counsel. Of course, a defendant should for good cause have the right to a continuance; but to prevent perjury and fraud the right to cross examine all affiants for the continuance including the defendant himself should exist, and the State should be permitted to meet the showing by counter affidavits. The method of selecting a jury should also be radically changed. Either the court itself should conduct the examination of jurors, or it should have more power in controlling counsel with respect thereto. It was never the design of the law to secure either ignorant or incompetent persons upon a trial jury. The preconceived opinion of a juror should not constitute a disqualification unless fixed and unqualified. There never was at any time any excuse for giving defendant an advantage over the State in the matter of peremptory challenges and yet in some States he is given two to the government's one. Someone

has said that if there be cause for excusing a juror he should be excluded for that cause and not otherwise. Although not ready to endorse this statement I believe that in no event should a defendant be given the right to exclude more than five jurors without assigning a cause which the law deems sufficient. It is all important to secure jurors who on the one hand shall be impressed with the duty of punishing crime for the interests of society at large and on the other with the thought that individual rights be respected and no innocent man made to suffer. This calls for men of intelligence and sound judgment, men who are not easily influenced by sympathy, governed by prejudice, or susceptible to unworthy motives. More care should be taken in the selection of jurors, and courts should be reluctant to excuse those who are best qualified to serve. Rules of evidence which obtain in law courts have been woven upon the loom of time. They obtain in order that those not experienced in hearing cases may not be misled and deceived as to the real issues to be tried. And in no other respect is there such a marked distinction between common and civil law proceedings as with reference to rules of evidence. All remember how hearsay evidence was received without limitation in the Dreyfus case and how distinguished generals were permitted to place their hands over their hearts and give their opinions that Dreyfus was guilty although having no personal knowledge whatever upon the subject. A change to the French system would not be tolerated, nor should it be. No one should be permitted to give his conclusions as to the guilt or innocence of another; nor should he be permitted to testify to mere gossip or as to what he heard others say. In some respects, however, there might be a beneficial change with reference to the introduction of testimony. Originally a defendant could not give testimony on his own behalf. This rule has generally been abrogated and in most jurisdictions he may be a witness on his own behalf; although he cannot be called by the State and forced to give incriminating answers. It is optional with him to go upon the witness stand. He may also take the depositions of absent witnesses to be used on his own behalf, but the State cannot do this. Under constitutional provisions a defendant is entitled to be confronted by the witnesses against him; and generally counsel are forbidden to make a reference to the defendant's failure to testify on his own behalf. One of the reforms which I propose is that the State be given the right to take depositions and to use them against one accused of crime under the same circumstances and conditions as authorize a defendant to use

them. Very many acquittals are due to the fact that the defendant by fair means or foul induces witnesses to depart from the jurisdiction of the court so that their testimony may not be had. And for various reasons witnesses against a defendant may not be able to attend court. If defendant be given the right to cross examine an absent witness in person or by counsel whenever his deposition is taken there can be no valid objection to the use of testimony in that form. As a defendant now has the right to take the stand in his own behalf and to explain away incriminating circumstances it seems to me the height of folly to prohibit counsel from making reference to such fact. The truth is what is sought in all cases both civil and criminal and if a man having knowledge of all the facts fails to explain the circumstances produced against him surely, it is logical to say that there is no explanation which he can offer. I do not agree with those who would make a criminal testify against himself, or to any change which would permit any form of torture to secure a confession, or to a grant to the State of the right to make unreasonable searches or seizures. These guarantees are fundamental and should be preserved. Nor would I change the rule as to reasonable doubt, save where as in some jurisdictions the presumption of innocence is made to take the place of positive or substantive proof. This latter rule is illogical and decidedly unjust to the State. Enough of a burden is imposed upon it when the presumption is made to stand simply as a shield protecting the defendant from conviction, unless the State proves his guilt beyond a reasonable doubt. It should not be made a sword nor be given the effect of substantive testimony on defendant's behalf. The trial jury is an essential part of our system of jurisprudence and should not be tampered with save in the direction of securing better jurors. In criminal cases majority verdicts are not, as I view it, permissible. The trial judge should have or exercise more authority over counsel in the trial of a case. Badgering and "bully-agg" of witnesses should be promptly stopped and counsel should at all times be confined to a dignified and orderly course. So long as jurors are judges of the facts the trial court should not hazard an opinion regarding the guilt of one accused of crime save where the State has failed to make out a case. If a jury is not competent to determine fact questions it should be abolished; if competent the trial judge should not usurp its functions. If properly instructed a jury of twelve men is as competent to decide questions of fact as the most learned judge. Coming now to the all important and much discussed question of

criminal appeals we find widely divergent views and a great clamor upon one side of the Atlantic, where until recently no appeals were allowed, which resulted last year in the establishment of a criminal court of appeals; and on the other side of the water urgent propositions from jurists, publicists and statesmen for the practical abolishment of appeals in all criminal cases. In view of this sharp conflict of opinion it is manifest that there must as usual be a middle view which will finally prevail. The results in the Maybrick, Edalji and other like cases in England brought about the establishment last year of a court of review for criminal cases; and the number of reversals in criminal cases in this country upon technical grounds has led to a most searching inquiry as to how these results may be avoided. So much has been written upon these matters that it is useless to attempt a review of the legislation, actual and proposed, to cure the evils. Neither the profession nor the people are ready as yet to abolish appeals in all criminal cases. Nor is this regarded as essential to a proper scheme of reform. There should, however, be some limitation upon this privilege and some changes in the rules almost universally applied to cases on appeal. Primarily no appeal should in my opinion be allowed from judgments rendered in criminal cases of which a magistrate or inferior tribunal has original jurisdiction. There must be an end to litigation somewhere and the judgment in these trivial misdemeanor cases should be final where rendered save upon some question of law reserved by the trial judge and certified to the court of appeals as a matter of public importance. And in such cases either the State or the defendant should have the right to raise the question and have it decided by the higher tribunal. The question so reserved should always be one of substantive as distinguished from adjective or remedial law. Right of appeal should exist in all the more serious cases. But from the appellate court should be taken the power of reviewing the testimony. The only question of fact which should be left to the court of appeals is this, Does the evidence upon the part of the State make out a *prima facie* case? That answered in the affirmative should end all inquiry as to the facts save where defendant has been denied the right of introducing relevant and material evidence on his own behalf. If he be deprived of such right then unless the testimony be cumulative a new trial should be awarded no matter what the reviewing court may think of the verdict returned. Any other rule in effect deprives one accused of crime of a jury trial. If the appellate court be the final

arbitrator in such cases then the question of guilt or innocence should be determined by a judge and not by a jury and the whole jury system should go as a relic of barbarism. If immaterial, irrelevant, or incompetent testimony be admitted on behalf of the State then there should be no presumption of prejudice on account thereof, and there should be no reversal unless the appellate court finds that such testimony was prejudicial to the accused. It is illogical to say that testimony which has no relevancy or materiality because too remote or of no logical bearing upon the issues is presumptively prejudicial. Such a postulate is based upon the assumption that minds capable of weighing and measuring facts and circumstances are just as likely to give effect to matters having no logical bearing or sequence as to material and relevant testimony. Incompetent testimony, otherwise material and relevant but inadmissible because of some arbitrary rule, should not for that reason alone be regarded as prejudicial. If informations be substituted for formal indictments by a grand jury, with liberal right of amendment, we shall have no more of those shocking cases based upon some trifling and technical defect of pleading which are common to most appellate courts. In my opinion there should also be a limit in every case upon the right of appeal. The questions should either be certified or reserved by the court trying the case or something in the nature of a writ of error should be allowed by the appellate tribunal or some of the judges thereof. This would preserve to a defendant all of his rights and at the same time put an effectual quietus upon frivolous appeals. No bail should be allowed unless and until the questions were reserved or a writ of error granted. The time for appeal should also be limited to three months from the time the judgment is rendered by the trial court. No good reason appears for giving defendant, six, nine or twelve months to determine whether or not he will take an appeal. Coming now to cause for reversal upon appeal it must be assumed that jurors may be trusted; if not, our whole system is wrong. With this assumption it must be granted that there are some errors which the jury itself may correct. As to these there should be no reversal. If the errors are not of this class then of course the court must make the correction. Allusion has already been made to those which the jury may correct. As to mistakes of substantive law made by the trial court, assuming that the case comes to the superior tribunal upon a writ of error or question reserved, there should be no reversal, as it seems to me, unless the court is able to say after reviewing all the evidence that the jury was

probably not possibly misled thereby. Juries are not usually influenced by technical errors of the court. They view the entire field and do not convict unless they are satisfied of moral as well as legal guilt. They do not closely scan the instructions, note the punctuation of sentences, or closely analyze the phrases used. They generally listen to the charge as read and without careful analysis reach their conclusions upon the whole case. Counsel may be depended upon to emphasize the important and controlling issues and facts, and unless there be glaring misdirection upon the part of the court, no harm usually results. Some of the reforms here proposed must be worked out through the laborious processes of constitutional amendment; but many of them may be secured immediately through legislative enactment and still others by judicial construction or reconstruction. The one demanding first consideration relates to appellate procedure. The almost universal rule which obtains in all courts of review is that where error is found, no matter how trifling, prejudice to defendant is presumed. Since the judicature acts of 1873, the law of England has been that,

A new trial shall not be granted on the ground of mis-direction of the jury or of the improper admission or rejection of evidence unless in the opinion of the court to which the application is made some substantial wrong or miscarriage of justice has been thereby occasioned on the trial.

A learned judge of an American court once said with respect to this that,

The English have had the good sense to keep the right of trial by jury on earth as an instrument for doing justice between man and man here in this world; whereas we in America have worked it up into the thin air of presumption and metaphysics.

Prior to the passage of the acts of parliament something over *thirty* years ago, England was suffering as badly as we from excessive technicality and her procedure was dilatory, expensive and unsatisfactory. Since that time her system has been simple, colloquial, flexible, prompt, free from technicality, and thoroughly in touch with the spirit of the times and of everyday life. Shall we in America be more conservative than the mother country, shall we simply out of veneration for the past retain our cumbersome, burdensome, over-technical and refined system of legal procedure? The extreme technicalities of our law grew up at a time when people were wresting their liberties and their rights

from king and lord and baron; when more than two hundred crimes were punishable by death; when the individual man was fighting for freedom, and when technicality was the only shield from horrible and revolting punishment for the most trivial of offenses. As said by another:

While we did not adopt the barbarous penal statutes of the old country, we did adopt a mass of technical rules of law which were invented by humane judges to avoid the necessity of imposing barbarous punishments; we have not adopted the barbarous punishment and we should not have adopted the humane technicalities which those punishments alone excused or justified. The present trouble in our criminal law lies not only in what we have created; but largely in what we have thus adopted. The humanity which by those technicalities made justice in spite of law a century ago in England makes law in spite of justice in America today.

This is but a restatement of that old aphorism: "Defects are but virtues carried to an excess." There being no excuse for over-refinement and technicality in the administration of our criminal laws, both the State and national government should hasten to enact statutes to the effect that a criminal case should not be reversed upon appeal, unless the record as a whole shows a substantial error plainly prejudicial to defendant's rights and a substantial miscarriage of justice on the real merits of the case. The English statute might well be reënacted in this country. Under such a statute many interlocutory rulings made during the progress of a trial will be treated as discretionary, and technical and nonconsequential errors will be disregarded. Reversals will not follow from error as a matter of course but only when prejudice is affirmatively found. We can well trust to the conservatism of courts as an efficient shield to the innocent, and at the same time secure society against those things which threaten the stability of our institutions. Frequently have we listened to that well known phrase: "Let justice be tempered with mercy," and it has often been so used as to thwart justice itself. First let us have justice and then mercy. Penologists have demonstrated that it is not the severity of punishment which acts as a deterrent from crime. Certainty and celerity of the processes of the law are really the greatest discouragement to the criminal classes. When the offender has been brought to bar for his wrong to society, then may society justly show mercy, then should it begin an investigation as to its own responsibility for the conditions which brought about that wrong, and then should it undertake the solution of the problem of how to

treat the culprit. Punishment should be made to fit the criminal and not the crime; and he whose liberty is a menace to society should be restrained just so long as it is unsafe to the community for him to be given his freedom. Determinate sentences have been a dismal failure and the time has arrived for that sort of punishment which commends itself to a humane, intelligent and responsible people. Practically all of the leading penologists of this country now favor the indeterminate sentence as the only reasonable and entirely just method of punishment; and the scheme is worthy of the best thought of all associations having at heart the interests of our common humanity. By nature and by training I am a conservative and not, I think, an iconoclast; but I have been so impressed during the last few years with the growing disrespect for law, the repeated lynchings common to every latitude, the many times farcical proceedings of courts of justice in the trial of criminals, the successful appeals of lawyers to the passions and sympathies of men, the callous disregard by jurors of the obligations of an oath, and the extreme technicality of appellate courts, as to institute a search for some sane reforms which will save our present system from the just criticisms which have been lodged against it, and in the end, from a disastrous revolution which may lead us as far away, perhaps, from that just mean between social and individual rights in the supposed interest of the entire body of the people, as we have heretofore traveled in our desire to protect and secure individual rights. Distributive justice which gives to every man his exact deserts should be the end and aim of all criminal procedure.